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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YAN SUI et al.,

Plaintiffs and Appellants,

v.

STEPHEN D. PRICE et al.,

Defendants and Respondents.

G052248

(Super. Ct. No. 30-2010-00342510)

O P I N I O N

Appeal from postjudgment orders of the Superior Court of Orange County,
Linda S. Marks, Judge. Affirmed.

Yan Sui and Pei-yu Yang, in pro. per., for Plaintiffs and Appellants.

Cane, Walker & Harkins and James C. Harkins, IV for Defendants and
Respondents.

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Plaintiffs Yan Sui and Pei-yu Yang appeal from two orders concerning attorney fees. In the first order, the court awarded attorney fees to defendants Stephen D. Price, Michelle J. Matteau, and 2176 Pacific Homeowners Association as the prevailing parties in plaintiffs' action against them. In the second order, the court denied plaintiffs' motion for attorney fees on the ground it was moot due to the court's granting of defendants' attorney fees motion. We affirm both orders.

FACTS¹

In plaintiffs' attorney fees motion, they stated their action against defendants involved the issues of (1) defendants' towing away plaintiffs' van and reporting a debt; (2) nonjudicial foreclosure with attendant charges; and (3) defendant Matteau's satellite dish installed on her unit allegedly in violation of the applicable Covenants, Conditions, and Restrictions (CC&R's). Plaintiffs alleged they had dismissed without prejudice in March 2010 the "issue of van towing and debt reporting." They based their claim to attorney fees on three contentions: First, they were the prevailing party by defeating defendants' special motion to strike (anti-SLAPP) motion. Second, they were the prevailing party in enforcing the CC&R's because Matteau removed the satellite dish. Third, they were the prevailing party because they gained more relief due to the court's denial of defendants' anti-SLAPP motion. Plaintiffs asserted they were not required under state law to state their "attorney's name on the record as the representing attorney under the analysis of *Mix v. Tumanjan Development Corp.* (2002) 102 Cal.App.4th 1318."

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We deny plaintiffs' apparent request to augment the record with the "appendices submitted" in their prior appeal G051520, because those appendices are not relevant to the reason for our affirming the court's orders.

In defendants' attorney fees motion, they claimed to be the prevailing party because the court had (1) sustained without leave to amend their demurrer to plaintiffs' action, and (2) dismissed plaintiffs' lawsuit, and entered judgment in defendants' favor. Defendants based their claim to attorney fees on the independent statutory grounds of Civil Code sections 1717, subdivision (a), and 5975.² They attached the declarations of defendants Price and Matteau, each declaring the real property at issue is subject to a Declaration of the CC&R's, as well as their attorney's declaration.

The court granted defendants' attorney fees motion, finding (1) defendants were the prevailing party in the action under Code of Civil Procedure section 1032, subdivision (a)(4), because the court had sustained without leave to amend defendants' demurrer, dismissed the action, and ordered judgment to be entered in defendants' favor, and (2) defendants were entitled to recover their reasonable attorney fees under section 5975, subdivision (c) and also pursuant to contract (the CC&R's).

The court denied plaintiffs' attorney fees motion on the ground the motion was moot because the court previously (1) had determined defendants were the prevailing party, and (2) had consequently granted defendants' attorney fees motion. With respect to plaintiffs' request for attorney fees "incurred in defeating Defendants' anti-SLAPP motion in October 2010," the court denied the request because it "is four years late and is also unsupported by admissible evidence that the \$2,500 paid by Plaintiffs back in April 2010 to attorney John Edwards for 'consulting' was incurred in connection with Defendants' anti-SLAPP motion, which was not filed until [September 29, 2010], and which Plaintiffs opposed *in pro per* on" October 12, 2010.

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All statutory references are to the Civil Code unless otherwise stated.

DISCUSSION

Plaintiffs contend the court abused its discretion by awarding attorney fees to defendants and denying them to plaintiffs. They assert the court failed to evaluate the respective relief achieved by the parties. They rely on *De La Cuesta v. Benham* (2011) 193 Cal.App.4th 1287 for their contention they are the prevailing party under section 1717 and on *Roberts v. Packard, Packard & Johnson* (2013) 217 Cal.App.4th 822 for their contention that even if a court dismisses an action after sustaining without leave to amend the defendant's demurrer, the defendant is not a "prevailing party for contractual fees."

"On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion." (*Connerly v. State Pers. Bd.* (2006) 37 Cal.4th 1169, 1175.) De novo review is warranted when an appellate court must construe a statute to determine whether the criteria for an attorney fee award has been satisfied. (*Id.* at p. 1175.) The party challenging the award bears the burden of affirmatively demonstrating error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141).

Plaintiffs' opening brief argues defendants were not the prevailing party for purposes of sections 1717 and 1032, but does not even mention section 5975, subdivision (c), one of the two independent statutory bases upon which the court expressly grounded its order granting defendants' attorney fees motion.³

Section 5975, subdivision (c) provides: "In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs." "Governing documents" includes "the declaration." (§ 4150.)

"Declaration" is also commonly referred to as 'declaration of covenants, conditions and

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Plaintiffs mention section 5975 once in their reply brief. We do not address arguments raised in a reply brief. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295.)

restrictions,’ ‘declaration of restrictions,’ or ‘CC&Rs.’” (8 Miller & Starr, Cal. Real Estate (4th ed. 2016) § 28:2, p. 28-16.) Reviewing courts have found that section 5975 ““reflect[s] a legislative intent that [the prevailing party] receive attorney fees *as a matter of right* (and that the trial court is therefore *obligated* to award attorney fees) whenever the statutory conditions have been satisfied.”” (*Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773.) “The Davis–Stirling Act does not define ‘prevailing party’ or provide a rubric for that determination. In the absence of statutory guidance, California courts have analyzed analogous fee provisions and concluded that the test for prevailing party is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives.” (*Ibid.*)⁴

Here, the court granted defendants’ attorney fees motion after determining they were the prevailing party under section 5975, subdivision (c), because the court had “sustained Defendants’ demurrer without leave to amend, dismissed the action and ordered Judgment to be rendered in favor of Defendants.” Plaintiffs have failed to meet their burden to demonstrate otherwise.

The court denied plaintiffs’ motion for attorney fees because it had previously “granted Defendants’ motion for attorneys’ fees . . . and determined Defendants the prevailing parties in this action entitled to recover . . . reasonable attorneys’ fees, so [plaintiffs’] Motion is moot.” Plaintiffs — by failing to address section 5975 and show the court erred by granting defendants’ attorney fees motion — have failed to demonstrate the court erred by denying plaintiffs’ attorney fees motion.

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“In California, common interest developments are subject to the provisions of the Davis–Stirling Common Interest Development Act” (*Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 377.)

DISPOSITION

The postjudgment orders are affirmed. Defendants shall recover their costs incurred on appeal.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.